

EMERGENCY NOTICE OF SPECIAL MEETING

ARIZONA BOARD OF FINGERPRINTING

Pursuant to Arizona Revised Statutes (A.R.S.) 38-431.02., notice is hereby given to the members of the Arizona Board of Fingerprinting and to the general public that the Board will hold an emergency meeting open to the public as specified below. The Board reserves the right to change the order of items on the agenda.

Pursuant to A.R.S. 38-431.01.A.2. and A.3., the Board may vote to go into Executive Session, which will not be open to the public, for legal advice concerning any item on this agenda or to review records exempt by law from public inspection.

Persons with a disability may request a reasonable accommodation such as a sign language interpreter by contacting Sally Loveland at (602) 223-2800. Requests should be made as early as possible to allow time to arrange the accommodation.

DATED AND POSTED this 14 day of May, 2002.

Arizona Board of Fingerprinting

By Sally A. Loveland
Sally A. Loveland, Director
(602) 223-2800

AGENDA

ARIZONA BOARD OF FINGERPRINTING

Thursday, May 16, 2002

9:00 a.m.

Arizona Board of Fingerprinting
2222 West Encanto Blvd., #350
Phoenix, Arizona 85005

PERSON
RESPONSIBLE

ROLL CALL

I. SPECIAL SESSION

- A. Review of Board Requirements for Expedited Review and Approval of Interim Work Permits – Subcommittee Report and/or Recommendations

Mr. Waite

II. CALL TO THE PUBLIC

Consideration and discussion of comments and complaints from the public. Those wishing to address the Board need not request permission in advance. Action taken as a result of public comment will be limited to directing staff to study the matter or rescheduling the matter for further consideration and decision at a later date.

III. ADJOURNMENT

AGENDA ITEM NO. I. A.

BOARD OF FINGERPRINTING MEETING DATE: May 16, 2002

SUBJECT: Consideration of Subcommittee's Recommendations for Expedited Reviews and Interim Work Permits

SUBMITTED BY: Mr. Waite

BACKGROUND INFORMATION:

The Board periodically reviews its procedures and requirements for good cause exception appeals. The current processes were reviewed by agency representatives and felt they were not too strict or too lenient. Nevertheless, because of our huge backlog, the subcommittee was tasked with reviewing our procedures to determine if changes could be made while still ensuring effective determination of good cause. The subcommittee's recommendations are not available at this time. They will present their recommendations to the Board at the meeting.

Attached are copies of the existing procedures and guidelines for good cause exception appeals.

BOARD ACTION REQUESTED: INFORMATION ☒ ACTION ☐ (described below)
ATTACHMENTS: YES ☐ NO ☒

HOW TO APPEAL FOR A GOOD CAUSE EXCEPTION

If you have been denied a fingerprint clearance from the Department of Public Safety, you may be eligible for a good cause exception from the Arizona Board of Fingerprinting. The Board consists of five members, representing the five agencies that require fingerprint clearance cards. These agencies are the Arizona Departments of Economic Security, Health Services, Education, Juvenile Corrections and the Administrative Office of the Courts.

To receive a good cause exception application, the Board must receive a request from the applicant AND a copy of the Department of Public Safety's denial letter within thirty (30) days of the date on the denial letter.

The Board has the right to consider your *entire* state and/or federal criminal record when making a good cause exception determination. A "good cause" exception can be based on a number of factors. Factors that are considered include, but are not limited to: the extent of the criminal record, the length of time since the latest offense, a pattern of behavior, the nature of the offenses, evidence of positive changes in lifestyle, the extent of rehabilitation, completion of treatment/counseling, completion of probation, restitution for crime, and excellent personal references.

Most people will be required to attend a good cause exception hearing before the Board. Each person's case is heard individually, but an applicant may bring a guest to speak on his or her behalf or to provide moral support. Depending upon the types of offenses on a person's criminal record and the length of time since they occurred, an applicant may be eligible for expedited consideration. At an expedited consideration review, an applicant's appeal is considered and either approved, or referred for a hearing. No applicant is denied a good cause exception at an expedited review.

BEFORE an applicant can be scheduled for a hearing, an expedited review, or be considered for an interim work permit, the Board must receive a COMPLETED application package. A completed package consists of:

- **Application Form (completed, signed and notarized)**
 - a) MUST include an explanation (in your own words) of every arrest that may be on your criminal history
 - b) MUST indicate whether you are appealing for a Class 1 or Class 2 card
- **Criminal History Affidavit (completed, signed and notarized)**
- **Evidence that you have met all requirements imposed by Courts**
 - a) Court documents showing conditions imposed
 - b) Receipts for restitution, fines, counseling, and/or screening evaluations
 - c) Proof that probation completed
 - d) Personal statements if court documents not available
- **Three (3) Letters of Reference (current, original, signed and dated)**
 - a) Do not need to be notarized
 - b) Can be quality references from friends, neighbors, co-workers, and/or employers
 - c) Must attest to your character, successful rehabilitation, or positive change in lifestyle

- If the letter from the Department of Public Safety indicates they have no disposition information, you **MUST** provide:
 - a) Court documents showing disposition of charge(s), *OR*
 - b) Court documents showing that their records have been purged
- If the letter from the Department of Public Safety indicates they have no disposition information AND the offense(s) occurred five (5) years ago or less, you **MUST** provide:
 - a) Police Report of Incident(s) *AND*
 - b) Court documents showing disposition of charge(s)

EXPEDITED CONSIDERATION:

You may be eligible for an expedited consideration. The Board will review your completed application package and either approve your request or schedule you for a hearing. If the Board approves, you will not be required to appear before the Board at a hearing. To be eligible for an expedited review, you must meet all of the guidelines listed below.

- A single, isolated arrest or conviction on the criminal record with the incident occurring three or more years from the appeal application date.
- Multiple arrests or convictions on the criminal record, with the latest incident occurring five (5) or more years from the appeal application date. *If there are multiple arrests or convictions for the same offense, the latest must have occurred at least ten years ago.*
- Arrest or conviction cannot involve physical violence, bodily harm or use of a weapon; *except*
 - Domestic Violence offenses of assault, disorderly conduct and/or trespassing fifteen (15) years or older are eligible as long as there are no other arrests or convictions newer than fifteen (15) years.
 - Domestic Violence offenses of disorderly conduct and/or trespassing five (5) years or older are eligible as long as the police report indicates that no physical violence was involved.
- Cannot be awaiting trial and must have met all of the terms and conditions imposed by the court; including completion of probation, payment of any fines, completion of community service hours, attendance at counseling, et cetera.
- Cannot have misrepresented his/her criminal history on any form required by the Board of Fingerprinting.

INTERIM WORK PERMIT:

An interim work permit allows an applicant to continue working while awaiting a decision from the Board. If an interim work permit is granted, it will be valid **ONLY** for the employing agency listed on the applicant's application to the Department of Public Safety for a fingerprint clearance card. An interim work permit may be valid for up to sixty (60) days.

To be eligible for an interim work permit, you must meet all of the criteria listed below:

- The applicant must meet **ALL** of the requirements for an expedited consideration.
- The applicant must provide an original, notarized recommendation - on letterhead - from an authorized representative of the employer for which the applicant wishes to work.
- The agency representative on the Board (from the state agency who contracts with the employing agency) must provide a positive recommendation.

Applicants must submit ALL REQUIRED DOCUMENTATION within 45 days of the date the application package was sent to them.

If more time is required, an applicant **MUST** contact the Board for approval to delay submission. If approval is not granted or a timely application package is not received, the Board will assume that the applicant has withdrawn from the process.

Once a case is closed, an applicant must reapply to the Department of Public Safety and be denied before appealing to the Board for a good cause exception.

If you have questions at any time during the appeal process, **PLEASE** contact office staff for assistance at (602) 223-2800.

Please use the enclosed checklist to ensure that all required documents have been included in the application package.

GOOD CAUSE EXCEPTION APPEAL

CHECKLIST

I. A completed application package consists of each of the items listed below. At a minimum, the following items are required:

- ☐ Good Cause Exception Application: complete, date, sign and have notarized.
- ☐ A written explanation of EVERY offense that may be on your criminal history.
- ☐ Evidence that you have met all of the terms and conditions of the courts. (court documents, receipts, and/or personal statement)
- ☐ Criminal History Affidavit: complete, date, sign and have notarized.
- ☐ THREE, ORIGINAL, SIGNED AND DATED letters of reference.

II. If the letter from the Department of Public Safety indicates they have no disposition information regarding the charges, you MUST also provide either:

- ☐ Court documents showing disposition of the charge(s) **OR**
- ☐ Court documents showing that their records have been purged.

III. If the letter from the Department of Public Safety indicates they have no disposition information regarding the charges, AND the offense(s) occurred five (5) years ago or less, you MUST also provide:

- ☐ Police Report of Incident(s) **AND**
- ☐ Court documents showing disposition of the charge(s).

Signature _____

Date _____



ARIZONA BOARD OF FINGERPRINTING
Mail Code 2500 P. O. Box 6638
Phoenix, AZ 85005-6638

GOOD CAUSE EXCEPTION APPLICATION

1. Type of clearance requested: ☐ Class One Card ☐ Class Two Card

2. Are you applying for an Interim Work Permit? ☐ Yes ☐ No

(If yes, you must include a notarized recommendation, on letterhead, from an authorized representative of the employer for which you wish to work.)

3. Legal Name (Last, First, Middle): _____

4. Date of Birth: _____

5. Social Security Number: _____

6. Mailing Address: _____

(Full Street Address including Apt. No. or P. O. Box No.)

(City)

State

Zip Code)

7. Daytime Telephone Number: () _____

8. Home Telephone Number: () _____

9. Please list the offense(s) for which you were denied: _____

10. List any other offenses that may be on your record: _____

On a separate page please provide the following information.

In your own words, please describe in detail each situation that an offense occurred.

- What led up to the event? Who else was involved? Where did the event occur? How long ago was the offense committed? Were there any mitigating circumstances? (Include copies of police reports, if available.)
- What was the disposition of the charge(s)? (Provide copies of court documents indicating dismissal, acquittal, probation, parole, if possible.)
- What, if any, were the terms of probation? Did you complete these terms satisfactorily? (Provide proof of restitution, community service, required counseling, training, etc.)

12. Have you ever had any professional certificate or license revoked or suspended? ☐ Yes ☐ No

If yes, please explain: _____

13. Please complete and return the Criminal History Affidavit enclosed with this application.

I hereby certify that the information in this application, including attached explanations, is true and complete to the best of my knowledge and belief.

X

(Signature of Applicant)

(Date)

Subscribed and sworn before me this _____ day of _____, _____ (year). My commission expires: _____

Notary Public

ARIZONA DEPARTMENT OF ECONOMIC SECURITY

CRIMINAL HISTORY AFFIDAVIT
CLASS I

Prior to applying for a Fingerprint Clearance Card, please read the following carefully to determine if you are eligible to receive a Fingerprint Clearance Card.

APPLICANT'S NAME (First, Middle, Last)	SOC. SEC. NO.	BIRTHDATE	AREA CODE AND PHONE NO.
APPLICANT'S ADDRESS (No., Street, City, State, ZIP)			
AGENCY'S NAME OR SPONSOR			
AGENCY'S ADDRESS (No., Street, City, State, ZIP)			
OSHA LICENSE NO. OF PROVIDER		AZ DEPARTMENT OF PUBLIC SAFETY APPLICATION NO.	

(Administrative Office of the Supreme Court, State Board of Education [Teacher Certification], Arizona Department of Economic Security, Arizona Department of Health Services and Arizona Department of Juvenile Corrections.)

A person who is awaiting trial on or who has been convicted of committing or attempting to commit one or more of the following offenses in this state or the same or similar offenses in another state or jurisdiction is precluded from receiving a Class I Fingerprint Clearance Card.

You MUST respond to each and every item listed by checking either yes or no.

Yes No

- ☐ ☐ 1. Sexual abuse of a minor.
- ☐ ☐ 2. Sexual abuse of a vulnerable adult.
- ☐ ☐ 3. Incest.
- ☐ ☐ 4. First or second degree murder.
- ☐ ☐ 5. Kidnapping.
- ☐ ☐ 6. Sexual assault.
- ☐ ☐ 7. Sexual exploitation of a minor.
- ☐ ☐ 8. Sexual exploitation of a vulnerable adult.
- ☐ ☐ 9. Commercial sexual exploitation of a minor.
- ☐ ☐ 10. Commercial sexual exploitation of a vulnerable adult.
- ☐ ☐ 11. Felony offenses involving sale, distribution or transportation of, offer to sell, transport or distribute or conspiracy to sell, transport or distribute marijuana, dangerous drugs or narcotic drugs.
- ☐ ☐ 12. Robbery.
- ☐ ☐ 13. Child prostitution as prescribed in A.R.S. § 13-3212.
- ☐ ☐ 14. Child abuse.
- ☐ ☐ 15. Abuse of a vulnerable adult.
- ☐ ☐ 16. Sexual conduct with a minor.
- ☐ ☐ 17. Molestation of a child.
- ☐ ☐ 18. Molestation of a vulnerable adult.
- ☐ ☐ 19. Aggravated assault.
- ☐ ☐ 20. A dangerous crime against children as defined in A.R.S. § 13-604.01.
- ☐ ☐ 21. Exploitation of minors involving drug offenses.
- ☐ ☐ 22. Felony offenses involving contributing to the delinquency of a minor.
- ☐ ☐ 23. Taking a child for the purposes of prostitution as defined in A.R.S. § 13-3206.
- ☐ ☐ 24. Neglect or abuse of a vulnerable adult.

Person who is awaiting trial on or who has been convicted of committing or attempting to commit one or more of the following offenses in this state or the same or similar offenses in another state or jurisdiction is precluded from receiving a Class I Fingerprint Clearance Card, except that the person MAY petition the Board of Fingerprinting for a good cause exception hearing pursuant to A.R.S. §41-619.55.

Yes No

- ☐ ☐ 1. Manslaughter.
- ☐ ☐ 2. Endangerment.
- ☐ ☐ 3. Threatening or intimidating.
- ☐ ☐ 4. Assault.
- ☐ ☐ 5. Unlawfully administering intoxicating liquors, narcotic drugs or dangerous drugs.
- ☐ ☐ 6. Assault by vicious animals.
- ☐ ☐ 7. Drive by shooting.
- ☐ ☐ 8. Assaults on officers or fire fighters.
- ☐ ☐ 9. Discharging a firearm at a structure.
- ☐ ☐ 10. Indecent exposure.
- ☐ ☐ 11. Public sexual indecency.
- ☐ ☐ 12. Lewd and lascivious acts.
- ☐ ☐ 13. Aggravated criminal damage.
- ☐ ☐ 14. Theft.
- ☐ ☐ 15. Theft by extortion.
- ☐ ☐ 16. Shoplifting.
- ☐ ☐ 17. Forgery.
- ☐ ☐ 18. Criminal possession of a forgery device.
- ☐ ☐ 19. Obtaining a signature by deception.
- ☐ ☐ 20. Criminal impersonation.
- ☐ ☐ 21. Theft of a credit card or obtaining a credit card by fraudulent means.
- ☐ ☐ 22. Receipt of anything of value obtained by fraudulent use of a credit card.
- ☐ ☐ 23. Forgery of a credit card.
- ☐ ☐ 24. Fraudulent use of a credit card.
- ☐ ☐ 25. Possession of any machinery, plate or other contrivance or incomplete credit card.
- ☐ ☐ 26. False statement as to financial condition or identity to obtain a credit card.
- ☐ ☐ 27. Fraud by person authorized to provide goods or services.
- ☐ ☐ 28. Credit card transaction record theft.
- ☐ ☐ 29. Misconduct involving weapons.
- ☐ ☐ 30. Misconduct involving explosives.
- ☐ ☐ 31. Depositing explosives.
- ☐ ☐ 32. Misconduct involving simulated explosive devices.
- ☐ ☐ 33. Concealed weapon violation.
- ☐ ☐ 34. Enticement of any persons for purposes of prostitution.
- ☐ ☐ 35. Procurement by false pretenses of any person for purposes of prostitution.
- ☐ ☐ 36. Procuring or placing persons in a house of prostitution.
- ☐ ☐ 37. Receiving earnings of a prostitute.
- ☐ ☐ 38. Causing one's spouse to become a prostitute.
- ☐ ☐ 39. Detention of persons in a house of prostitution for debt.
- ☐ ☐ 40. Keeping or residing in a house of prostitution or employment in prostitution.
- ☐ ☐ 41. Pandering.
- ☐ ☐ 42. Transporting persons for the purpose of prostitution or other immoral purposes.
- ☐ ☐ 43. Possession and sale of peyote.
- ☐ ☐ 44. Possession and sale of a vapor-releasing substance containing a toxic substance.
- ☐ ☐ 45. Sale of precursor chemicals.
- ☐ ☐ 46. Possession, use or sale of marijuana, dangerous drugs or narcotic drugs ~~on school grounds or near schools.~~
- ☐ ☐ 47. Manufacture or distribution of an imitation controlled substance.
- ☐ ☐ 48. Manufacture or distribution of an imitation prescription-only drug.
- ☐ ☐ 49. Manufacture or distribution of an imitation over-the-counter drug.
- ☐ ☐ 50. Possession or possession with intent to use an imitation controlled substance.

Yes No

- ☐ ☐ 51. Possession or possession with intent to use an imitation prescription-only drug.
☐ ☐ 52. Possession or possession with intent to use an imitation over-the-counter drug.
☐ ☐ 53. Manufacture of certain substances and drugs by certain means.
☐ ☐ 54. Adding poison or other harmful substance to food, drink or medicine.
☐ ☐ 55. A criminal offense involving criminal trespass and burglary under Title 13, Chapter 15.
☐ ☐ 56. A criminal offense involving organized crime and fraud under Title 13, Chapter 23.
☐ ☐ 57. Child neglect.
☐ ☐ 58. Misdemeanor offenses involving contributing to the delinquency of a minor.
☐ ☐ 59. Driving under the influence of intoxication liquor or drugs as prescribed in A.R.S. § 28-1381 or extreme driving under the influence of intoxication liquor or drugs as prescribed in A.R.S. § 28-1382 or aggravated driving under the influence of intoxication liquor or drugs as prescribed in A.R.S. § 28-1383.
☐ ☐ 60. Offenses involving domestic violence.
☐ ☐ 61. Arson.

The offenses and statutory references listed on the previous pages may be modified at any time due to legislative action. For the current list of legislatively mandated precluded offenses refer to A.R.S. § 41-1758.03.

If the Department of Public Safety is unable to determine within fifteen business days of receipt of the person's state and federal criminal history record information whether the person is awaiting trial on or has been convicted of committing any of the offenses listed above, the department MAY NOT issue a Class I Fingerprint Clearance Card (A.R.S. § 41-1758.03.O). However, the person MAY request a good cause exception hearing pursuant to A.R.S. § 41-619.55.

APPLICANT'S NAME (Please print)

DATE

NOTARIZATION

I hereby certify under penalty of perjury that the answers given above are true and correct to the best of my knowledge and belief.

Applicant's Signature

State of Arizona, County of _____

Subscribed and sworn before me, a notary public, this _____ day of _____

_____ (year). My commission expires: _____

Notary Public's Signature

AGENDA ITEM NO. I. B.

BOARD OF FINGERPRINTING MEETING DATE: May 16, 2002

SUBJECT: Consideration of contingency plans for FY 2003

SUBMITTED BY: Mr. LeHew

BACKGROUND INFORMATION:

The Board has been under-funded since its inception. It appears unlikely that the Legislature will appropriate adequate funding for the Board in FY2003 and efforts to pass legislation to establish a fee to support Board operations have been unsuccessful. None of the five state agencies represented on the Board have offered to share expenses and DPS is no longer willing or able to support un-funded Board operations.

The Board currently has 889 open appeals in various stages of processing and is scheduling good cause exception hearings for February 2004. Another 200 appeals are likely to be received before the end of this fiscal year. Subtracting for the scheduled hearings and potential expedited reviews, the Board will most likely end the fiscal year with about 1,000 pending cases. Contingency plans must be developed regarding what to do with these outstanding cases as well as what to do with new people eligible for appeal in FY 2003.

Ms. Christine Cassetta, Board attorney, recommends that the Board stop accepting appeal applications. She stated that the *Board* doesn't cease because there is no funding. The Board just ceases *operations*. She recommends that the Board no longer accept appeals so that as many of the existing ones as possible be completed. She also recommended that Risk Management be contacted for advice.

Ms. Kristine Rowen, Risk Management, states that the Attorney General's Office would defend us in any potential lawsuit - Risk Management only pays the bill in the event that the lawsuit is lost. Risk Management resolves claims under A.R.S. 12-348. Ceasing Board operations would not be an issue for Risk Management because it is through no fault of our own that we would no longer have the funding to hold hearings - thus the applicant would not have an A.R.S.12-348 claim against the Board of Fingerprinting.

Contingency plans must be made to decide how and when to cease Board operations and how to complete as many open cases as possible prior to ceasing operations.

BOARD ACTION REQUESTED: **INFORMATION** ☒ **ACTION** ☒ (described below)

Develop contingency plans for ceasing Board operations and closing Board offices.

ATTACHMENTS: **YES** ☒ **NO** ☐

41-619.51. Definitions

(L00, ch 251, sec 15)

In this article, unless the context otherwise requires:

1. "Agency" means the supreme court, the department of economic security, the department of education, the department of health services or the department of juvenile corrections.
2. "Board" means the board of fingerprinting.
3. "Facility" or "program" means state facilities or programs that provide direct services to adults with developmental disabilities or to juveniles.
4. "Good cause exception" means the issuance of a fingerprint clearance card to an employee pursuant to section 41-619.55.
5. "Person" means a person who is required to be fingerprinted pursuant to any of the following:
 - (a) Section 8-322.
 - (b) Section 15-512.
 - (c) Section 15-534.
 - (d) Section 15-1330.
 - (e) Section 36-425.03.
 - (f) Section 36-594.01.
 - (g) Section 36-882.
 - (h) Section 36-883.02.
 - (i) Section 36-897.01.
 - (j) Section 36-897.03.
 - (k) Section 36-3008.
 - (l) Section 41-1964.
 - (m) Section 41-2814.
 - (n) Section 46-141, subsection A.
 - (o) Section 46-321.

41-619.51. Definitions

(L01, ch 111, sec 2. Eff 4/1/02)

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 - (d) Section 15-1330.
 - (e) Section 36-425.03.
 - (f) Section 36-594.01.
 - (g) Section 36-882.
 - (h) Section 36-883.02.
 - (i) Section 36-897.01.
 - (j) Section 36-897.03.
 - (k) Section 36-3008.
 - (l) Section 41-1964.
 - (m) Section 41-1967.01.
 - (n) Section 41-2814.
 - (o) Section 46-141, subsection A.

(p) Section 46-321.



41-619.52. Board of fingerprinting; organization; meetings

A. The board of fingerprinting is established consisting of the following members:

1. A representative of the supreme court who is appointed by the chief justice of the supreme court.
2. A representative of the department of economic security who is appointed by the director of the department of economic security.
3. A representative of the department of education who is appointed by the superintendent of public instruction.
4. A representative of the department of health services who is appointed by the director of the department of health services.
5. A representative of the department of juvenile corrections who is appointed by the director of the department of juvenile corrections.

B. At its initial meeting and annually thereafter, the board shall elect a chairperson and vice-chairperson from among its members and any other officers that are deemed necessary or advisable.

C. The board shall meet at least once each calendar quarter and additionally as the chairperson deems necessary. A majority of the members constitutes a quorum for the transaction of business.

D. Board members:

1. Serve at the pleasure of the appointing authority.
2. Are not eligible for compensation but are eligible for reimbursement of expenses pursuant to title 38, chapter 4, article 2.

E. The chief justice, the superintendent of public instruction or a department director may designate an alternate member to represent a member who is appointed pursuant to subsection A by the chief justice, the superintendent of public instruction or a department director, respectively.

41-619.53. Board of fingerprinting; powers and duties; personnel; liability

A. The board of fingerprinting shall:

1. Determine good cause exceptions pursuant to section 41-619.55.
2. Adopt rules to implement this article, including rules to establish good cause exceptions for the issuance of class one and class two fingerprint clearance cards pursuant to section 41-1758.03. This rule making is exempt from the requirements of chapter 6 of this title.
3. Administer and enforce this article and rules adopted pursuant to this article.
4. Furnish a copy of its rules to all applicants who petition the board for a good cause exception pursuant to section 41-1758.03 and, on request, to licensees, contract providers and state agencies.

B. If the board members unanimously agree to grant a good cause exception, the board shall request in writing that the department of public safety issue a card to the applicant. If the board does not make a unanimous decision, a card shall not be issued to the applicant.

C. Each board member shall determine on behalf of the member's respective agency or division whether a person should be granted a good cause exception.

D. If a person is required to be fingerprinted as a condition of employment by more than one agency and the person would not serve a common population and no common good cause exception standard exists, each board member shall determine for the purposes of the member's agency alone whether a good cause exception should be granted and shall notify the department of public safety to issue the person a card. The board shall request in writing that the department of public safety designate on the fingerprint clearance card the agency or agencies that approve a good cause exception.

E. The board may employ clerical, professional and technical personnel subject to appropriated monies and shall prescribe their duties and determine their compensation.

F. Members of the board are not liable for acts done or actions taken by any board member if the members act in good faith following the requirements of this article.

41-619.54. Confidentiality of criminal record information; exception

A. All criminal history record information that is maintained by the board is confidential, except that criminal history record information may be disclosed pursuant to a determination for a good cause exception pursuant to section 41-619.55.

B. Persons who are present at a good cause exception hearing shall not discuss or share any criminal history record information outside of the good cause exception hearing.

C. Criminal history record information and good cause exception determinations and hearings are exempt from title 39, chapter 1.

41-619.55. Good cause exceptions; revocation

A. The board shall determine good cause exceptions.

B. The board shall hold a good cause exception hearing if the board determines that it either:

1. Will deny a good cause exception.
2. Does not have enough information to make a final determination.

C. The following persons shall be present during good cause exception hearings:

1. A representative of any state agency that requires a person to have a valid fingerprint clearance card.
2. The person who requested the good cause exception hearing. The person may be accompanied by a representative at the hearing.

D. The board may grant a good cause exception if the person shows to the board's satisfaction that the person is not awaiting trial on or has not been convicted of committing any of the offenses listed in section 41-1758.03, subsection B, C, F or G or that the person is successfully rehabilitated and is not a recidivist. Before granting a good cause exception the board shall consider all of the following:

1. The extent of the person's criminal record.
2. The length of time that has elapsed since the offense was committed.
3. The nature of the offense.
4. Any applicable mitigating circumstances.
5. The degree to which the person participated in the offense.
6. The extent of the person's rehabilitation, including:
 - (a) Completion of probation, parole or community supervision.
 - (b) Whether the person paid restitution or other compensation for the offense.
 - (c) Evidence of positive action to change criminal behavior, such as completion of a drug treatment program or counseling.
 - (d) Personal references attesting to the person's rehabilitation.

E. If the board grants a good cause exception to a person, the board shall request in writing that the department of public safety issue a class one or class two fingerprint clearance card to the person.

F. The board shall review reports it receives of the arrest, charging or conviction of a person for offenses listed in section 41-1758.03 who previously received a fingerprint clearance card.

G. The board may request in writing that the department of public safety revoke a person's fingerprint clearance card pursuant to section 41-1758.04 if the person received a class one or class two fingerprint clearance card and the person is subsequently convicted of an offense listed in section 41-1758.03, subsection B or F.

H. Pending the outcome of a good cause exception determination, the board may issue interim approval to continue working to a good cause exception applicant.

41-619.56. Board of fingerprinting fund

A. The board of fingerprinting fund is established consisting of monies appropriated by the legislature. The board shall administer the fund subject to legislative appropriation for the purposes provided in this article.

B. Monies deposited in the fingerprinting fund are subject to section 35-190.

12-348. Award of fees and other expenses against the state or a city, town or county; reduction or denial of award; application; basis for amount of award; source of award; definitions

A. In addition to any costs which are awarded as prescribed by statute, a court shall award fees and other expenses to any party other than this state or a city, town or county which prevails by an adjudication on the merits in any of the following:

1. A civil action brought by the state or a city, town or county against the party.
2. A court proceeding to review a state agency decision pursuant to chapter 7, article 6 of this title or any other statute authorizing judicial review of agency decisions.
3. A proceeding pursuant to section 41-1034.
4. A special action proceeding brought by the party to challenge an action by the state against the party.
5. An appeal by the state to a court of law from a decision of the personnel board under title 41, chapter 4, article 6.
6. A civil action brought by the party to challenge the seizure and sale of personal property by the state or a city, town or county.

B. In addition to any costs which are awarded as prescribed by statute, a court may award fees and other expenses to any party, other than this state or a city, town or county, which prevails by an adjudication on the merits in an action brought by the party against this state or a city, town or county challenging:

1. The assessment or collection of taxes or in an action brought by this state or a city, town or county against the party to enforce the assessment or collection of taxes.
2. The adequacy or regularity of notice of delinquent taxes.
3. The regularity of sales of property for delinquent taxes.

C. The court in its discretion may deny the award provided for in this section or may reduce the award if it finds that any of the following applies:

1. During the course of the proceeding the prevailing party unduly and unreasonably protracted the final resolution of the matter.
2. The reason that the party other than the state or a city, town or county has prevailed is an intervening change in the applicable law.
3. The prevailing party refused an offer of civil settlement which was at least as favorable to the party as the relief ultimately granted.

D. A party may apply pursuant to the applicable procedural rules for an award of attorney fees and other expenses authorized under this section and shall include as part of the application evidence of the party's eligibility for the award and the amount sought, including an itemized statement from the attorneys and experts stating the actual time expended in representing the party and the rate at which the fees were computed.

E. The court shall base any award of fees as provided in this section on prevailing market rates for the kind and quality of the services furnished, except that:

1. An expert is not eligible for compensation at a rate in excess of the highest rate of compensation for experts paid by this state or a city, town or county.
2. Except for awards made pursuant to subsection B of this section, the award of attorney fees may not exceed the amount which the prevailing party has paid or has agreed to pay the attorney or a maximum amount of seventy-five dollars per hour unless the court determines that an increase in the cost of living or a special factor, such as the limited availability of qualified attorneys for the proceeding involved, justifies a higher fee.
3. For awards made pursuant to subsection B of this section, the award of attorney fees may not exceed the amount which the prevailing party has paid or agreed to pay the attorney or a maximum amount of one hundred seventy-five dollars per hour.
4. Except for awards made pursuant to subsection B of this section, an award of fees against a city, town or county as provided in this section shall not exceed ten thousand dollars.
5. For awards made pursuant to subsection B of this section, an award of fees against the state or a city, town or county shall not exceed thirty thousand dollars for fees incurred at each level of judicial appeal.

F. The particular state agency over which a party prevails shall pay the fees and expenses awarded as provided in this section from any monies appropriated to the agency for that purpose. If no agency is involved or if an agency fails or refuses to pay fees and other expenses within thirty days after demand by a person who has received an award pursuant to this section, and if no further review or appeals of the award are pending, the person may file a claim for the fees and other expenses with the department of administration, which shall pay the claim within thirty days, in the same manner as an uninsured property loss under title 41, chapter 3.1, article 1. If, at the time the agency failed or refused to pay the award, it had appropriated monies either designated or assignable for the purpose of paying awards, the legislature shall reduce the agency's operating appropriation for the following year by the amount of the award and shall appropriate the amount of the reduction to the department of administration as reimbursement for the loss.

G. A city, town or county shall pay fees and expenses awarded as provided in this section within thirty days after demand by a party who has received an award if no further review or appeal of the award is pending.

H. This section does not:

1. Apply to an action arising from a proceeding before this state or a city, town or county in which the role of this state or a city, town or county was to determine the eligibility or entitlement of an individual to a monetary benefit or its equivalent, to adjudicate a dispute or issue between private parties or to establish or fix a rate.
2. Apply to proceedings brought by this state pursuant to title 13 or 28.
3. Entitle a party to obtain fees and other expenses incurred in making an application for an award pursuant to this section for fees and other expenses.

4. Apply to proceedings involving eminent domain, foreclosure, collection of judgment debts or proceedings in which the state or a city, town or county is a nominal party.

5. Personally obligate any officer or employee of this state or a city, town or county for the payment of an award entered under this section.

6. Apply, except as provided in subsection A, paragraph 5 of this section, to proceedings involving the personnel board under title 41, chapter 4, article 6.

7. Apply to proceedings brought by a city, town or county pursuant to title 13 or 28.

8. Apply to proceedings brought by a city, town or county on collection of taxes or pursuant to traffic ordinances or to criminal proceedings brought by a city, town or county on ordinances which contain a criminal penalty or fine for violations of those ordinances.

I. As used in this section:

1. "Fees and other expenses" means the reasonable expenses of expert witnesses, the reasonable cost of any study, analysis, engineering report, test or project which the court finds to be directly related to and necessary for the presentation of the party's case and reasonable and necessary attorney fees, and in the case of an action to review an agency decision pursuant to subsection A, paragraph 2 of this section, all fees and other expenses that are incurred in the contested case proceedings in which the decision was rendered.

2. "Party" means an individual, partnership, corporation, association or public or private organization.

3. "State" means this state and any agency, officer, department, board or commission of this state.

Each participating institution, public or private, in order to be eligible to receive state matching funds under the state student incentive grant program for grants to students, shall provide an amount of institutional matching funds that equals the amount of funds provided by the state to the institution for the state student incentive grant program. Administrative expenses incurred by the commission for postsecondary education shall be paid from institutional matching funds and shall not exceed twelve per cent of the funds in fiscal year 2002-2003.

For fiscal year 2002-2003, any unencumbered balance remaining in the postsecondary education fund on June 30, 2002, and all grant monies and other revenues received by the commission for postsecondary education during this fiscal year, when paid into the state treasury, are appropriated for the explicit purposes designated by special line items and for additional responsibilities prescribed in sections 15-1851 and 15-1852, Arizona Revised Statutes.

Of the total amount appropriated for the private postsecondary education student financial assistance program, no more than ten per cent may be used for program administrative costs.

The appropriations for Arizona college and career guide, Arizona minority educational policy analysis center and twelve plus partnership are estimates representing all monies distributed to this fund, including balance forward, revenue and transfers, during fiscal year 2002-2003. The appropriations shall be adjusted as necessary to reflect actual final receipts credited to the postsecondary education fund.

Sec. 52. DEPARTMENT OF PUBLIC SAFETY

	<u>2002-03</u>
FTE positions	1,804.0
Lump sum appropriation	\$119,038,300
GITEM	5,223,100
King's County Board	186,900
Total appropriation - department of public safety	\$124,428,300
Fund sources:	
State general fund	\$ 44,158,600
Highway user revenue fund	28,974,600
State highway fund	28,158,300
Arizona highway patrol fund	13,468,100

1	Criminal justice enhancement fund	2,187,500
2		
3	Safety enforcement and transportation	
4	infrastructure fund	1,122,900
5		
6	Crime laboratory assessment fund	3,713,600
7		
8	Arizona deoxyribonucleic acid	
9	identification fund	426,600
10		
11	Automated fingerprint identification	
12	fund	2,116,200

13		
14	Fingerprint clearance board fund	35,900

15		
16	Board of fingerprinting fund	66,000

17		
18	Performance measures:	
19	Fatal highway crashes	352

20		
21	Per cent of total highway crashes related	
22	to alcohol	15

23		
24	Per cent of scientific analysis cases over	
25	30 calendar days old	1.0

26		
27	Per cent of system reliability of the Arizona	
28	automated fingerprint identification network	98

29		
30	Clandestine labs dismantled	460

31		
32	Per cent of agency staff turnover	5.0

33		
34	Administration as a per cent of total cost	13.9

35		
36	Customer satisfaction rating for citizens	
37	(Scale 1-8)	6.0

38

39 Any monies remaining in the department of public safety joint account

40 on June 30, 2003 shall revert to the funds from which they were appropriated.

41 The reverted monies shall be returned in direct proportion to the amounts

42 appropriated.

43 The \$66,000 for fingerprinting in fiscal year 2002-2003 is appropriated

44 from the state general fund to the board of fingerprinting fund and is